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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,490	11/26/2003	Dawn Sikorski	030867	9538
26285 7590 04/11/2008 KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP 535 SMITHFIELD STREET PITTSBURGH, PA 15222				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/723,490

**Applicant(s)**

SIKORSKI, DAWN

**Examiner**

Lien T. Tran

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.  
4a) Of the above claim(s) 33 and 34 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-32 and 35-45 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 8/2/05  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

Applicant's election without traverse of Species I claims 1-32, 35-45 in the reply filed on 3/24/08 is acknowledged.

Claims 35-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 is vague and indefinite. While the preamble recites a method for preparing a food product, the body of the claim does not recite any processing steps to prepare the food product. The processing step of preparing one of a dough and batter does not give the food product; it is not recited how the dough and batter are prepared to form the food product. The step is confusing; is the dough being prepared or the batter being prepared.

Claim 36 has the same problem as claim 35. Furthermore, it is not clear what the step "processing one of the dough and batter into a finished product" encompasses.

Claim 43 has the same problem as claim 35.

Claim 44 has the same problem as claim 36.

Claim 45 is vague and indefinite. It is not clear what the step preparing the food product encompasses.

Claim 35-45 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the specific procedures disclosed in the specification, does not reasonably provide enablement for the method as claimed. The specification does not enable any person skilled in the art to which it pertains, or with

which it is most nearly connected, to carry the invention commensurate in scope with these claims.

In claim 35, applicant recites a method for preparing a food product comprising the step of preparing one of a dough and a batter. However, the claim does not recite any processing parameter of how this dough and batter are prepared. There are many different doughs and batters and the processing steps for one is not the same as another. It is not known what dough or batter is prepared. There is no one universal method of preparing dough or batter so that one skilled in the art would readily know how to prepare it. The processing steps are preparing bread dough are different from cookie dough; the steps can even be different within the same type of dough. Thus, one skilled in the art would not know how to carry out the method from the claim. Same problem is noted for claims 36, 43-45.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-11,17, 20-24, 26-32, 35-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Goto et al. ( EP 0990391A1)

Goto et al disclose an oil and fat composition comprising 1,3 diacylglycerol oil in amount of 15-95%. The fatty acids comprised by the diacylglycerol include 55% or more of unsaturated fatty acids. The oil and fat composition is used in products such as cakes, cookies , pies, breads etc... The amount of oil and fat of the food product in the

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range of 3-95%. Food materials such as emulsifiers, lecithin, gum, colorant etc... can be added. ( see page 2 lines 40-58, page 4 lines 20-58 and the examples.)

Goto et al disclose the food products and the method as claimed. Since Goto et al disclose cakes, cookies, bread etc.. They inherently disclose preparing one of a dough and a batter and processing the dough and batter to finished product. Since Goto et al disclose emulsifier is added and the products are the same as claimed, it is inherent the products comprise oil-in-water emulsion comprising diacylglycerol oil.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2,12-16, 18,19,25 rejected under 35 U.S.C. 103(a) as being unpatentable over Goto et al.

Goto et al do not disclose substitute for all of the triacylglycerol oil and fat, ingredients as in claims 12-14, the foods are brownies and muffin and the protein content of the product.

It would have been obvious to one skilled in the art to replace all of the triacylglycerol when desiring a healthier product; this would have been an obvious matter of preference. It would have been obvious to sodium steroyl lactylate because it is a well known emulsifier and Goto et al teach to include emulsifier. It would have been obvious to make other baked products such as muffin and brownies when desiring the healthy oil composition in such products. It would have been obvious to formulation the product with any protein level depending on the nutrition desired. This can readily be determined by one skilled in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 9, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794